

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAFAEL CALDERON, a/k/a RAFAEL
CALDERO,

Defendant-Appellant.

UNPUBLISHED

October 23, 2003

No. 242941

Kent Circuit Court

LC No. 02-001318-FC

Before: Griffin, P.J., and Neff and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant Rafael Calderon was convicted of armed robbery, MCL 750.529, and carrying a concealed weapon (CCW), MCL 750.227. Defendant was sentenced as a second habitual offender to a term of six to twenty years in prison for the armed robbery and to a concurrent term of five to seven and a half years for the CCW conviction. Defendant appeals as of right his conviction of CCW and his sentences. We affirm.

Defendant argues that the evidence presented at trial was insufficient to support his conviction of carrying a concealed weapon. We disagree. Pursuant to MCL 750.227, it is a criminal offense for a person to carry a dangerous weapon concealed on or about his person except in his own dwelling or business or on his own land. Although the prosecution presented no direct evidence on the issue of concealment, a jury may base its verdict on circumstantial evidence and reasonable inferences drawn from it. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Based on the evidence presented at trial, we conclude that a reasonable jury could have found beyond a reasonable doubt that defendant had a knife concealed on or about his person immediately before he committed the robbery. In particular, the victim testified that defendant approached him, offered to sell him a stereo, and then took two steps away when he declined. Immediately after this transaction, defendant surprised the victim by coming up behind him and holding a knife to his throat. Because the complainant did not report seeing the knife during his initial encounter with defendant and testified that he was surprised by the attack, a reasonable jury could infer that the knife was not discernible by ordinary observation when defendant initially approached the victim. Viewing the evidence in a light most favorable to the prosecution, we hold that the evidence was sufficient for a rational jury to find defendant guilty beyond a reasonable doubt of the crime of carrying a concealed weapon.

Next, defendant appeals his sentences on constitutional grounds. Because defendant was convicted of an offense that occurred on January 12, 2002, the statutory guidelines apply. MCL 769.34(10). Furthermore, the statute clearly provides that sentences within the guidelines range shall be affirmed:

If a minimum sentence is within the appropriate guidelines sentencing range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence. *Id.*

In the present case, defendant's sentencing guidelines recommended a minimum sentence of 51 to 106 months on his conviction for armed robbery. Because defendant's minimum sentence of seventy-two months is within the statutory guidelines range, it should be affirmed.

Defendant's constitutional challenges to the legislative sentencing guidelines have been rejected by the Michigan Supreme Court in *People v Hegwood*, 465 Mich 432, 436-437; 636 NW2d 127 (2001). In addition, under circumstances of this case, there is no "presumption of vindictiveness" in the sentences imposed. *Alabama v Smith*, 490 US 794; 109 S Ct 2201; 104 L Ed 2d 865 (1989).

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Christopher M. Murray